APPEAL NO. 010703

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 9, 2001. The hearing officer determined that the certification of maximum medical improvement (MMI) and impairment rating (IR) issued by Dr. C, the designated doctor, is entitled to presumptive weight; and, that the appellant (claimant) reached MMI on May 5, 1999, with an IR of 12% for the compensable injury of _____.

The claimant has appealed asserting that she should be reevaluated and given a later MMI date and higher IR. The respondent (self-insured) responds urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable left knee injury on _____. The claimant has had numerous certifications of MMI/IR since the date of injury. On May 15, 1997, Dr. Y, the claimant's first treating doctor, certified that the claimant had reached MMI on May 15, 1997, with a 0% IR. On September 9, 1998, Dr. M, a Texas Workers' Compensation Commission (Commission) appointed designated doctor, certified that the claimant had not yet reached MMI. On May 5, 1999, Dr. L, a chiropractor and the claimant's third treating doctor, certified that the claimant had reached MMI on May 5, 1999, with a 13% IR. On June 28, 1999, Dr. C, a chiropractor appointed because the treating doctor at the time was a chiropractor, the second Commission appointed designated doctor, certified that the claimant had reached MMI on May 5, 1999, with a 12% IR using Tables 35 and 36 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). On December 5, 2000, Dr. S, the claimant's fourth treating doctor, certified that the claimant had reached MMI on January 28, 2000, with a 17% IR. (The hearing officer determined that Dr. S did not use the mandated version of the AMA Guides as required under Section 408.124.)

Section 408.125(e) provides that the designated doctor's report has presumptive weight and requires that the Commission "shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary." The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer determined that Dr. C's certification was entitled to presumptive weight and that the claimant had reached MMI on May 5, 1999, with a 12% IR. The hearing officer's determinations are supported by the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge